

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case. No. 2014010263

ORDER DENYING RENEWED
REQUEST TO CONTINUE

On May 22, 2014, the undersigned administrative law judge issued an order granting Oakland Unified School District's (Oakland) request for a continuance and scheduling the hearing to commence on August 5, 2014. On May 23, 2014, Oakland filed a request for reconsideration or in the alternative a motion to continue the scheduled hearing dates to September 2014. The motions for reconsideration and continuance were denied on June 2, 2014. On June 23, 2014, Oakland filed what it calls a "renewed motion to continue" the scheduled hearing date. Student filed an opposition to Oakland's motion on June 26, 2014.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, §11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the

interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION AND ORDER

Oakland's "renewed motion to continue" is essentially a motion for reconsideration of the June 2, 2014, order denying its motion for reconsideration. Oakland cited no authority justifying reconsideration of an already reconsidered order. Additionally, Oakland had two prior opportunities to submit any and all information necessary to support its position; namely, when it filed its original motion to continue on May 19, 2014, and again when it filed its motion for reconsideration on May 23, 2014. The evidence submitted, including the declarations of three Oakland employees and Oakland's attorney were considered and given due weight prior to those rulings. Oakland now submits five additional declarations regarding witness unavailability and another from its counsel. Rather than obtaining and submitting this information as a complete initial motion for reconsideration, Oakland attempts to have their witness' availability considered piecemeal. As indicated in the first motion for reconsideration, however, this information was known or could have been known to Oakland when it filed its earlier requests. Therefore, to the extent this is a second motion for reconsideration, it is denied.

Oakland has also asserted that this should be considered a new request to continue this due process hearing. Oakland argues that good cause exists to continue this matter because only it and not Student will be prejudiced by a continuance because Student is currently in his desired placement. Student argues that he will be prejudiced by a continuance because he has the right to have this matter timely heard and that the residential portion of his placement is contingent upon a third-party continuing to pay and not Oakland.

The request for hearing in this case was filed in January 2014. The farther out from the original filing, the more removed this is from the mandate that a hearing be conducted and a decision rendered within 45 days of receipt of the due process notice. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.)

The calendar conflicts of Oakland's witnesses do not overcome Student's right to have this matter timely heard, his prospective placement definitively determined, and his past denial of a free appropriate public education resolved. Moreover, OAH's calendar could not

accommodate a hearing in September as requested by Oakland. Therefore, even if good cause to continue had been established, this matter would have been continued into October, some ten months after it was filed. In light of the forgoing, good cause has not been established and the renewed request for a continuance is denied.

ORDER

1. Motion to continue denied.
2. All previously scheduled dates to remain on calendar.

IT IS SO ORDERED.

DATE: July 3, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings